



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 12 2009

Michael Zahara
Nevada State Democratic Party
Former-Executive Board/Clark-at-Large
9225 W Charleston Bl #1151
Las Vegas, Nevada 89117

RE: MUR 6026
Jan Churchill, et al.

Dear Mr. Zahara:

On March 4, 2009, the Federal Election Commission reviewed the allegations in your complaint dated June 12, 2008, and found that on the basis of the information provided in your complaint and information provided by the Respondent: (1) there is no reason to believe that Jan Churchill violated 2 U.S.C. § 432(b)(3); (2) there is no reason to believe that the Nevada State Democratic Party or Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C. §§ 432(b), 432(c), 434(b), or 441a(f); and (3) there is no reason to believe that Berkley for Congress and Linda L. Goldberg, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

A handwritten signature in black ink, appearing to read "Ana J. Peña-Wallace".

Ana J. Peña-Wallace
Acting Assistant General Counsel

Enclosures: Factual and Legal Analyses (3)

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Berkley for Congress and Linda Goldberg,
in her official capacity as Treasurer

MUR: 6026

1 This matter arises from a complaint alleging that Berkley for Congress and Linda
2 Goldberg, in her official capacity as Treasurer, violated the Federal Election Campaign
3 Act of 1971, as amended (the "Act") by making excessive contributions to the Nevada
4 State Democratic Party ("NSDP").

5 According to FEC disclosure reports, Berkley for Congress has contributed
6 \$415,725.00 to the NSDP since 2006, including \$190,000 in 2008, \$25,000 in 2007, and
7 \$200,725 in 2006. Since 2002, the first year of contributions, Berkley for Congress has
8 donated over \$670,000. Representative Berkley, however, did not make any personal
9 contributions to the NSDP.

10 Under 2 U.S.C. § 439a(a)(4), a candidate's principal committee may transfer
11 unlimited funds to state or local party committees. *See also* 11 C.F.R. § 113.2(c);
12 AO 2004-22 (Bercuter for Congress). Therefore, because contributions from Berkley for
13 Congress were not excessive, there is no reason to believe that Berkley for Congress and
14 Linda Goldberg, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(1).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Jan Churchill

MUR: 6026

I. INTRODUCTION

Complainant Michael Zahara, a former Nevada State Democratic Party ("NSDP") board member, alleges that Jan Churchill, Treasurer of the NSDP and staffer for U.S. Representative Shelley Berkley, violated the Federal Election Campaign Act, as amended ("the Act"), when she paid herself a salary and reimbursed herself for travel expenses with state party funds without approval from the NSDP or the Clark County Democratic Central Committee ("CCDC"), a state committee. Complainant claims that the salary payments and travel reimbursements are in contravention of the bylaws and charter of the NSDP and constitute embezzlement.

As discussed below, the Commission finds no reason to believe that Jan Churchill violated 2 U.S.C. § 432(b)(3) by commingling NSDP and personal funds.

I. FACTUAL AND LEGAL ANALYSIS

Complainant alleges that Ms. Churchill distributed money to herself from NSDP and CCDC accounts without authorization. The Act prohibits the commingling of committee funds with "the personal funds of any individual," including officers of a committee. 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.

Here, Ms. Churchill received periodic payments from NSDP. According to FEC filings, the NSDP made 43 bi-monthly disbursements to Ms. Churchill from December 30, 2005 until July 31, 2007. The disbursements totaled \$25,168.79, and each individual disbursement ranged from \$571.58 to \$572.25. Ms. Churchill also received two

1 payments on October 5, 2007 from the NSDP, totaling \$338.25, for "Travel Expenses."
2 In separate responses, Ms. Churchill and the NSDP state that these disbursements were
3 for legitimate salary payments and travel reimbursements.

4 Complainant alleges that the payments were unauthorized based in large part on
5 the NSDP Charter and Bylaws and the Nevada Revised Statutes, which he contends
6 prohibit such payments. However, it is unclear that these documents in fact prohibit
7 salary payments and travel reimbursements. The NSDP Charter states that it is a conflict
8 of interest for a paid employee, contractor, or consultant of the NSDP to serve as
9 treasurer in the party committee.¹ The Bylaws of the NSDP do not mention payments to
10 the treasurer.² The Nevada Revised Statutes require only that the state central party
11 committees elect executive officers from the committee's membership, and that these
12 officers serve "as provided in the bylaws and regulations of the central committee."³

13 As noted above, both the NSDP and Ms. Churchill assert that the payments were
14 for legitimate committee expenses, and thus there is no reason to believe that Jan
15 Churchill violated 2 U.S.C. § 432(b)(3).

16 **III. CONCLUSION**

17 Based on the foregoing, the Commission finds no reason to believe that Jan
18 Churchill violated 2 U.S.C. § 432(b)(3) by commingling Nevada State Democratic Party
19 and personal funds.

¹ *Charter of the Democratic Party of Nevada*, Article III § 12, retrieved from
http://www.nvdems.com/images/nsdp_charter-february2008.pdf.

² *Democratic Party of Nevada Bylaws*, retrieved from
http://www.nvdems.com/images/nsdp_bylaws-february2008.pdf.

³ See Nev. Rev. Stat. § 293.160 (2008).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Nevada State Democratic Party and Jan Churchill,
in her official capacity as Treasurer

MUR: 6026

I. INTRODUCTION

Complainant Michael Zahara, a former Nevada State Democratic Party board member, alleges that the Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer ("NSDP"), violated the Act by failing to maintain adequate records or report salary payments and travel reimbursements made by the NSDP to Ms. Churchill. Additionally, Complainant alleges that Ms. Churchill has accepted, at her home address, contributions to the NSDP from Berkley for Congress instead of having the contributions sent to official NSDP offices. Complainant contends that this is improper because Ms. Churchill acts as both Treasurer of the NSDP as well as an employee of Representative Shelley Berkley. Finally, Complainant alleges that the NSDP received excessive contributions from Berkley for Congress, in violation of the Act.

As discussed below, the Commission finds no reason to believe that the Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C §§ 432(c), 434(b), 432(b), or 441a(f).

II. FACTUAL AND LEGAL ANALYSIS

A. Failure to Maintain Adequate Records and Report Salary Payments and Travel Expenses

Complainant alleges that Ms. Churchill distributed money to herself from NSDP accounts without authorization. Here, Ms. Churchill received periodic payments from

1 NSDP.¹ According to FEC filings, the NSDP made 43 bi-monthly disbursements to Ms.
2 Churchill from December 30, 2005 until July 31, 2007. The disbursements totaled
3 \$25,168.79, and each individual disbursement ranged from \$571.58 to \$572.25. Ms.
4 Churchill also received two payments on October 5, 2007 from the NSDP, totaling
5 \$348.50, for "Travel Expenses."

6 Both the NSDP and Ms. Churchill assert that the payments were for legitimate
7 committee expenses, and there is no allegation or information suggesting that the
8 committee failed to maintain adequate records or report salary payments and travel
9 reimbursements to Ms. Churchill. Therefore, there is no reason to believe that the
10 Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer,
11 violated 2 U.S.C. §§ 432(c) or 434(b).

12 **B. Receipt of Contributions at Home**

13 Complainant further alleges that Ms. Churchill received contributions from
14 Representative Berkley to the NSDP at her home address, rather than at NSDP offices.
15 There is no specific statute or regulation, however, governing contributions to state and
16 local political committees sent to the treasurer's home address. Under 2 U.S.C.
17 § 432(b)(1)-(3), all contributions received by an authorized committee must be given to
18 the treasurer, and must be segregated from individual funds with no commingling.
19 Similarly, 2 U.S.C. § 432(c) requires the committee treasurer to keep accurate records of
20 contributions. Here, there is no allegation that Ms. Churchill commingled contributions
21 received from Berkley for Congress with her personal funds, nor does the complaint

¹ Ms. Churchill also received salary disbursements from Rep. Shelley Berkley. See Janet D Churchill, Congressional Staffer, *Salary Data*, retrieved from http://www.legistorm.com/person/Janet_D_Churchill/10552.html. In 2007, Ms. Churchill was paid \$53,412.54. For the 2006 fiscal year she was paid \$51,272.28, and in 2005 Ms. Churchill was paid \$48,177.00.

1 allege that Ms. Churchill kept inaccurate records of these contributions. Therefore, there
2 is no reason to believe that the Nevada State Democratic Party and Jan Churchill, in her
3 official capacity as Treasurer, violated 2 U.S.C. §§ 432(b) or 432(c).

4 **C. Excessive Contributions**

5 Finally, Complainant asserts that “hefty donations” from Representative Berkley
6 to the state and local party committees “leaves an impression” that Representative
7 Berkley is subsidizing Ms. Churchill’s unauthorized salary and travel reimbursements.
8 According to FEC disclosure reports, Berkley for Congress has contributed \$415,725.00
9 to the NSDP since 2006, including \$190,000 in 2008, \$25,000 in 2007, and \$200,725 in
10 2006. Since 2002, the first year of contributions, Berkley for Congress has donated over
11 \$670,000. Representative Berkley, however, did not make any personal contributions to
12 the NSDP.

13 Under 2 U.S.C. § 439a(a)(4), a candidate’s principal committee may transfer
14 unlimited funds to state or local party committees. *See also* 11 C.F.R. § 113.2(c);
15 AO 2004-22 (Bereuter for Congress). Therefore, because the NSDP did not receive
16 excessive contributions, there is no reason to believe that the Nevada State Democratic
17 Party and Jan Churchill, in her official capacity as Treasurer, violated 2 U.S.C. § 441a(f).

18 **III. CONCLUSION**

19 Based on the foregoing, the Commission finds no reason to believe that the
20 Nevada State Democratic Party and Jan Churchill, in her official capacity as Treasurer,
21 violated 2 U.S.C §§ 432(c), 434(b), 432(b), or 441a(f).